

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In re Applications of	)	MM Docket No. 99-153
	)	
READING BROADCASTING, INC.	)	File No. BRCT-940407KF
	)	
For Renewal of License of	)	
Station WTVE(TV), Channel 51	)	
Reading, Pennsylvania	)	
	)	
and	)	
	)	
ADAMS COMMUNICATIONS	)	File No. BPCT-940630KG
CORPORATION	)	
	)	
For Construction Permit	)	

To: Administrative Law Judge Richard L. Sippel

**OPPOSITION TO MOTION TO ENLARGE ISSUES**  
**(UNAUTHORIZED TRANSFER OF CONTROL AND**  
**MISREPRESENTATION/LACK OF CANDOR)**

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November 19, 1999

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## SUMMARY

In its *Motion to Enlarge Issues (Unauthorized Transfer of Control and Misrepresentation/Lack of Candor)*, Adams alleges that certain events that began with the October 30, 1991 shareholders' meeting appear to represent an unauthorized transfer of control, and therefore, the Commission should add an issue to this proceeding. However, Adams has not shown, nor can it show, that control over Reading ever shifted out of the hands of the company's stockholders or that there was a greater than 50% change in ownership of the company prior to the Commission's approval of the company's long-form transfer of control application. Indeed, Adams' theory that Reading underwent an unauthorized transfer of control at the same time it was seeking approval for a transfer of control is unsupportable by any rational analysis

Prior to the start of the subject license term, Reading had been forced into bankruptcy. Reading was able to retain control of its license for station WTVB as debtor-in-possession. In September 1991, an insurgent group of Reading stockholders, representing substantially less than 50% of the stockholders of the company, apparently met and elected a new board of directors. In response to the insurgent board's actions, the shareholders of the company voted to appoint a new board of directors which acted within its authority pursuant to (1) Reading's By-laws, (2) the August 1991 board of directors' unanimous written consent, (3) the reorganization plan approved by the Bankruptcy Court, and (4) by the voting of the shareholders themselves. The exercise of a majority vote of stockholders to appoint

a new board of directors and for that board to act is not a transfer of control.

Therefore, contrary to Adams' assertions, the subject actions did not represent a takeover by Micheal Parker or the so-called Parker-led board. Likewise, the subject actions did not change the ownership of Reading, nor did they affect the operation of WTVE.

Moreover, just a few months prior to the subject actions, Reading had filed a short-form application, which the Commission granted, for Reading to voluntarily transfer control from debtor-in-possession status. The transfer of control was necessary to effectuate Reading's reorganization plan that had been approved by the Bankruptcy Court. However, before consummating the transaction, Reading determined that it would not consummate that transaction because additional court-ordered stock changes would culminate in a greater than 50% change in ownership, requiring long-form approval. Reading subsequently filed a long-form application to voluntarily transfer control. The Commission granted consent to that transfer, which was subsequently consummated. Thus, the facts show that Reading did act to seek all necessary Commission approval when and as needed to come out of bankruptcy and for a greater than 50% change in ownership.

Adams also seeks to add an issue to this proceeding to determine whether Reading engaged in misrepresentation and/or lack of candor by its failure to timely report certain changes in the composition of Reading's board and officers. To the extent that Reading may have inadvertently failed to timely notify the Commission regarding the composition of its board of directors and officers, the fact is that

Reading ultimately did correctly report that information. The fact that this information was accurately disclosed to the Commission during the renewal term undercuts any inference of an intent by Reading to deceive the Commission.

The claims made by Adams conflict with logic and with the underlying facts. No basis exists for adding the requested issues.

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**MISREPRESENTATION/LACK OF CANDOR)**

1. Pursuant to Section 1.294 of the Commission's Rules, Reading Broadcasting, Inc. ("Reading"), by its attorneys, hereby submits its Opposition to the *Motion to Enlarge Issues (Unauthorized Transfer of Control and Misrepresentation / Lack of Candor)* ("Motion") filed on October 20, 1999 by Adams Communications Corporation ("Adams").
2. In its *Motion*, Adams urges the Presiding Officer to add issues to this proceeding to determine (1) whether an unauthorized transfer of control of Reading

was effectuated, and if so, the effect of such on Reading's basic qualifications to be a licensee; and (2) whether Reading engaged in misrepresentation and/or lack of candor in the information it has reported to the Commission concerning Reading's owners, officers and directors and, if so, the effect of such on Reading's basic qualifications to be a Commission licensee. However, Adams' *Motion* is factually and legally baseless. Adams has not shown, nor can it show, that control over Reading ever shifted out of the hands of the company's stockholders or that there was a greater than 50% change in ownership of the company prior to the Commission's approval of the company's long-form transfer of control application.

3.     Standard. In order to grant Adams' *Motion*, the Presiding Officer must find, pursuant to Section 1.229 of the Commission's Rules, with respect to each issue, that Adams has set forth specific allegations of fact, supported, where necessary, by affidavits from persons with personal knowledge, demonstrating that substantial and material questions of fact exist. Absent such finding, the Presiding Officer must deny Adams' *Motion*.

4.     As a preliminary matter, as factual support for its *Motion*, Adams relies on notes it was permitted to take, pursuant to the Presiding Officer's *Order*, FCC 99M-59 (released October 8, 1999), while it reviewed the minutes of Reading's shareholders and directors meetings, pending a decision by the Presiding Officer as to whether Reading would be required to produce all of the minutes. Pursuant to

the *Order*, Adams was only permitted to take “non-detailed notes that identify subject matter(s) of particular minutes” together with “the date, place and stated purpose of the meeting.” Thus, at the time that Adams prepared and filed its *Motion*, the actual meeting minutes were not in Adams’ possession, and the Presiding Officer had not yet determined whether Reading would be required to produce the contested minutes, nor had the Presiding Officer determined that Adams could rely on its counsel’s notes for any pleadings.

5. However, rather than respect the Commission’s procedures and wait for the Presiding Officer to complete his *in camera* review of the minutes and to determine whether Reading would be required to produce any of the contested minutes, Adams rushed, without any self-evident reason other than apparently to continue its pattern of character assassination against Reading, to file the instant *Motion*.

6. Even though under certain circumstances actual meeting minutes may be admitted in administrative proceedings as evidence, it is abundantly clear that Adams’ mere references throughout its *Motion* to its counsel’s notes and declaration does not meet the strict pleading standard required by Section 1.229. Based on Adams’ failure to meet the burden set forth in Section 1.229 the Presiding Officer should deny Adams’ *Motion*. In addition to these fatal procedural defects, Adams’ *Motion*, as explained below, is factually and legally baseless.



I. There Has Been No Unauthorized Transfer of Control.

7. In its *Motion*, Adams alleges that certain events that began with the October 30, 1991 shareholders' meeting where the shareholders, on Micheal Parker's motion, elected a new board of directors, appear to represent an unauthorized transfer of control.

8. Contrary to Adams' assertions, the subject actions did not represent a "takeover" by Micheal Parker. Likewise, the subject actions did not change the ownership of Reading, nor did they affect the operation of WTVE. Acting pursuant to Reading's By-laws, the August 1991 board of directors' unanimous written consent, the reorganization plan approved by the Bankruptcy Court, and by actions of the shareholders themselves, the so-called Parker board acted within its authority. The exercise of that existing authority is not a transfer of control. Therefore, under Section 310(d) of the Act, no further Commission approval was required.

9. Moreover, as explained below, and acknowledged by Adams, just a few months prior to the October 30, 1991 meeting, Reading had filed a short-form application, which the Commission subsequently granted, for Reading to voluntarily transfer control from debtor-in-possession status. The transfer of control was necessary to effectuate Reading's reorganization plan that had been approved in June 1991 by the Bankruptcy Court. However, before consummating the

transaction, Reading determined that a long-form application was required due to a court order for the garnishment of stock in Reading held by Dr. Aurandt to satisfy an unpaid debt to certain individuals. Reading subsequently filed a long-form application to voluntarily transfer control, which explained (in Exhibit 4) the garnishment issue involving Dr. Aurandt's stock. The long-form application was approved by the Commission on February 10, 1992, and subsequently consummated on March 12, 1992. At most, Reading may have inadvertently failed to timely report to the Commission certain changes in the composition of its officers and directors. However, these lapses represent actions that only required Commission notification – which was done in Reading's ownership report filed on March 29, 1994 – not actions that required Commission consent.

A. Transfer of Control Under Section 310(d).

10. Section 310(d) of the Communications Act of 1934, as amended, prohibits the transfer of control of a broadcast station without the consent of the Commission. *See* 47 U.S.C. § 310(d).

11. In ascertaining whether a transfer of control has occurred, the Commission has traditionally looked beyond mere legal title to determine whether there has been a *de facto* change in the ultimate control of the station. *See WHDH, Inc.*, 17 FCC 2d 856 (1969), *aff'd sub nom. Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 932 (1971). *De facto* control is

defined as actual control of the licensee and primarily applies where the party or entity in question has the power to control or dominate management of the licensee. *See Univision Holdings, Inc.*, 7 FCC Rcd 6672, 6675 (1992), *quoting Benjamin L. Dubb*, 16 FCC 2d 274, 289 (1951). Indeed, the Commission will find a *de facto* transfer of control to a minority shareholder “only where there is clear evidence of the minority shareholder/director’s dominance.” *See By Direction Letter to William S. Paley*, 1 FCC Rcd 1025, 1026 (1986).

12. Over the years, the Commission has established certain guidelines in this area, including whether the ultimate control over the station’s finances, its personnel, and its programming have shifted to a new entity or individual. *See Siete Grande Television, Inc.*, 11 FCC Rcd 21154, 21156 (Mass Media Bureau 1996). While the indispensable component of control is the ability of the licensee to exercise full responsibility over all matters involving the operation of the station, certain duties and responsibilities can be delegated to third parties. The Commission has held that the day-to-day operation of a station by an agent or employee, when guided by policies set by the licensee, is not inconsistent with the Communications Act, so long as the licensee has the right to revoke such delegation and to exercise full responsibility over the operation of the station. *See Daniel Forrestall, Receiver for All American Broadcasting Company*, 8 FCC Rcd 884, 886

(1993); *Southwest Texas Public Broadcasting Council*, 85 FCC 2d 713, 715-16

(1981); *Alabama Educational Television Commission*, 33 FCC 2d 495, 508 (1972).

B. The Transfer Of Control From Reading Broadcasting, Inc., As Debtor-In-Possession, To Reading Broadcasting, Inc., Was Duly Authorized.

13. Prior to the start of the subject license term and under the leadership of founder and then President, Dr. Henry Aurandt, Reading had been forced into bankruptcy. Reading was able to retain control of its license for station WTVE as debtor-in-possession.<sup>1</sup>

14. In June 1989, through certain letter agreements entered into by company representatives, Reading retained Partel, Inc. to manage the day-to-day operations of station WTVE and to assist Reading in preparing a plan of reorganization to move the company out of Chapter 11 bankruptcy. *See* Ex. A at 2, Ex. D. Reading maintained authority over final programming decisions and ultimate control over the station's finances, as well as the ability to terminate the agreement for misfeasance or inadequate performance. Even though Micheal Parker was a duly elected officer and director of Reading, during the period addressed in Adams' *Motion*, Mr. Parker never had final authority over programming decisions, he never had authority to sign checks, and he never had

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<sup>1</sup> On April 29, 1988, the Commission granted the application of Reading Broadcasting, Inc. for consent *nunc pro tunc* to the involuntary transfer of control from Reading Broadcasting, Inc. to Reading Broadcasting, Inc. as Debtor-in-Possession.

authority to enter into contractual arrangements on behalf of Reading with terms in excess of one year.

15. At the August 1, 1989 shareholders' meeting, which incidentally coincides with the start of the subject renewal term, Reading's shareholders, among other things, (1) elected a new Board of Directors that consisted of Micheal Parker, Henry N. Aurandt, M.D., Robert Clymer, M.D., Jack A. Linton, Esquire, and Edward Fischer, M.D., and (2) authorized company officials to enter into the Management Services Agreement with Partel, Inc. *See* Ex. A at 3. Reading notes that Mr. Parker was the only individual elected to a directorship who was not a Reading shareholder.<sup>2</sup>

16. At a special board of directors meeting held directly after the shareholders meeting, the following officers were elected: Henry N. Aurandt, M.D., Chairman of the Board and Chief Executive Officer ("CEO"); Micheal Parker, President and Chief Operating Officer ("COO"); and Jack A. Linton, Esquire, Secretary of the Corporation and of the Board. *See* Ex. C.

17. Thus, as of August 1, 1989, Micheal Parker was duly elected as an officer and director of Reading. Moreover, it is significant that Micheal Parker's

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<sup>2</sup> This action was consistent with Reading's By-laws. *See* Ex. B at 6 (Art. IV, § 1 of Reading's By-laws, states, in relevant part, "The directors need not be residents of this Commonwealth or shareholders in this corporation").

election as officer and director occurred prior to his acquiring a stock interest in Reading and prior to either the board's ratification or the Bankruptcy Court's approval of the Management Services Agreement with Partel, Inc.<sup>3</sup> Contrary to Adams' assertion otherwise, Parker's position as President and director of Reading was timely disclosed to the Commission in Reading's 1991 Annual Ownership Report.<sup>4</sup> See Ex. E. In light of the August 1, 1989 events, Reading cannot understand why Adams would assert that Micheal Parker "wrested control of RBI

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<sup>3</sup> Reading observes that the Management Services Agreement provides that Micheal Parker shall be elected Executive Vice President of Reading. See Ex. D at 4. The fact that Parker served as President rather than Executive Vice President provides further evidence that the Management Services Agreement, at this time, was not yet binding on the company.

<sup>4</sup> Adams incorrectly states that there was no ownership report or filing which disclosed Micheal Parker's election as president between August, 1989 and August, 1991. *Motion* at n.3. In fact, Reading disclosed that Micheal Parker was President and Director of Reading in its 1991 Annual Ownership Report dated March 28, 1991. See Ex. E. Under Commission rules in effect at that time, licensees were required to annually file an ownership report on the anniversary of the date that its renewal application is to be filed. See 47 C.F.R. § 73.3615. The applicable date for Reading is April 1 of each year. On January 25, 1990, the board of directors elected Dr. Aurandt, President, Micheal Parker, Executive Vice President, and Jack Linton, Secretary, of Reading. See Ex. BB at 2. At the February 19, 1991, directors' meeting, Dr. Aurandt resigned as President and Micheal Parker was elected President and CEO of Reading. See Ex. CC at 14. Therefore, the 1991 Annual Ownership Report represents the first time that Reading was required to report, which it did, that Micheal Parker was President of Reading. This represents yet one more example of Adams' false claims.

from, and over the objections of, the original controlling shareholders.”<sup>5</sup> *Motion* at ¶16.

18. At the September 13, 1989 directors’ meeting, Dr. Aurandt submitted, and the board accepted, his resignation as CEO. *See* Ex. F at 1. As a result, Micheal Parker served as President, CEO, and COO of Reading. The board also resolved, at this meeting, that all corporate checks would require the signature of two board members and that any contract entered into on behalf of Reading for a period in excess of one year would require board approval. *See* Ex. F at 1. Finally, the board ratified the Management Services Agreement with Partel, Inc. and

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<sup>5</sup> In its ongoing effort to cast Micheal Parker as a villain and insurrectionist, Adams omits any mention of the May 23, 1990 directors’ meeting where a staff member of WTVE presented a letter to the directors signed by WTVE staff persons, that expressed their overwhelming support for Micheal Parker. Additionally, the staff members recognized the commitment and dedication that Mr. Parker had exhibited, as well as the remarkable progress that had been made at the station since Mr. Parker had arrived. It seems that the staff had become aware of the rising tension between Dr. Aurandt and Micheal Parker. Having experienced, first-hand, the station’s downward spiral into bankruptcy under Dr. Aurandt’s leadership, contrasted with the remarkable progress that been made in turning the station around under Micheal Parker’s leadership, the staff persons were highly motivated to share their insights with the board. The employees were so committed to the station and confident that Micheal Parker’s leadership was necessary for the station’s continued viability that they were willing to stake their livelihood on maintaining his leadership at the station. *See* Exh. EE at 9.

instructed bankruptcy counsel to submit the agreement to the Bankruptcy Court for approval. *See* Ex. F at 3.<sup>6</sup>

19. In January 1991, the Bankruptcy Court issued an order that confirmed Reading's reorganization plan. *See* Ex. I. The approved reorganization plan ordered the enforcement of the terms and conditions of the Management Services Agreement with Partel, Inc.<sup>7</sup> *Id.* at 5, ¶9. Reading notes that Section 5.a of the Management Services Agreement provided, upon Bankruptcy Court approval of Reading's reorganization plan, that Partel, Inc., as compensation for its services to Reading, would receive a certain ownership interest in Reading. *See* Ex. G at 9.

20. In August 1991, Reading's board adopted a resolution in lieu of a meeting, by unanimous written consent, which authorized any officer of the corporation, on behalf of the corporation, to sign such documents necessary to implement the corporation's reorganization plan that was approved by the Bankruptcy Court, without further action by the board. *See* Ex. H.

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<sup>6</sup> As clearly stated on its face, the Management Services Agreement was subject to Bankruptcy Court approval. Thus, until the Bankruptcy Court gave consent, the Management Services Agreement was not binding on the company. An amended version of the Management Services Agreement dated March 21, 1990 was included with Reading's *Motion for Approval of Management Services Agreement and of Stipulation and Subordination Agreement* that was filed with the Bankruptcy Court on June 19, 1990. *See* Ex. G at 6.

<sup>7</sup> It should be noted that there is nothing within the four corners of the Management Services Agreement that would suggest abandonment of control by Reading. *See* Ex. G.



21. On August 15, 1991, Reading filed a short-form transfer of control application (FCC Form 316) requesting the Commission's consent to the *pro forma* transfer of control of Reading Broadcasting, Inc., as debtor-in-possession, to Reading Broadcasting, Inc. *See* Ex. J. The application disclosed that, after the Commission granted its consent to transfer, Partel, Inc. would be issued a 29.69% ownership interest in Reading, subject to an option held by Meridian Bank that, upon exercise, would divest a certain portion of Partel's ownership interest. *Id.* (see Exhibit 2 at 8). The application also disclosed that, after grant of the application, Harvey Massey, Alfred Busby, Paul Pavloff, and Stella Pavloff-Bull, as shareholders whose qualifications had not previously been approved by the Commission, would cumulatively hold a 3.96% ownership interest in Reading. *Id.* (see Exhibit 2 at 5-8). However, the application showed that even with the transfers of those interests, over 50% of the stock would still be controlled by stockholders previously approved by the Commission. *Id.* (see Exhibit 2 at 9).

22. The Commission granted Reading's application on August 27, 1991. *See* Ex. K. Under Commission rules, Reading was required to consummate the transfer of control by October 28, 1991. According to Reading's stock register, stock

was issued, on October 15, 1991, to Partel, Inc. *See* Ex. L. Before that date, neither Mr. Parker nor Partel, Inc. had any ownership interest in Reading.<sup>8</sup>

23. On October 22, 1991, on behalf of Reading, as debtor-in-possession, then-counsel for Reading, requested an extension of time to December 27, 1991, within which to consummate the transfer of control. *See* Ex. M. Then-counsel for Reading explained that an extension was necessary because additional time was needed to implement the reorganization plan. *Id.* In that letter, then-counsel for Reading also advised the Commission that Reading had already begun to make arrangements to consummate the transaction. *Id.* It is apparent that the issuance of stock to Partel, Inc., in accordance with the court approved reorganization plan, represented the existing consummation arrangements that counsel alluded to. On November 13, 1991, the Commission granted Reading's request for an extension of time within which to consummate the transaction. *See* Ex. N.

24. On or about October 10 and 11, 1991, writs of execution were served by the U.S. Marshall on Reading, through Micheal Parker, as President, and Marvin Mercer, as counsel, as garnishee of certain shares of Reading stock to which Dr. Aurandt claimed entitlement. *See* Ex. O. This garnishment order was issued in

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<sup>8</sup> Although the Management Services Agreement contained an option provision whereby Partel, Inc. was to receive certain future stock ownership, as a general matter, an option to acquire shares does not enter into transfer of control determinations until the option is exercised. *See Standard Corporation*, 87 FCC 2d 604, 608 (1981).

response to the July 31, 1991 judgment entered against Dr. Aurandt by the U.S. District Court for the Eastern District of Pennsylvania to satisfy certain claims made against Dr. Aurandt by Harvey Massey, Paul Pavloff, Stella Pavloff, and Alfred Massey. *See* Ex. P. Because Dr. Aurandt had failed to satisfy the judgment, the plaintiffs issued and served the aforementioned writs of execution on Reading as garnishee of certain shares of Dr. Aurandts' stock to satisfy their claims. In order to comply with the writs of execution, Reading was required to distribute certain shares of Dr. Aurandt's stock, representing 13.98% of Reading's outstanding stock, to Harvey Massey, Paul Pavloff, Stella Pavloff and Alfred Busby.

25. Because Reading was directed to distribute an additional 13.98% stock interest in the company to stockholders whose qualifications had not previously been approved by the Commission, Reading determined that it could not consummate the pending transfer of control which had been filed on a short-form application. Therefore, on November 22, 1991, Reading filed a long-form transfer of control application (FCC Form 315). *See* Ex. Q. In footnote 1 to Exhibit 2 of that application, Reading explicitly stated that the short-form application that had been granted on August 27, 1991 was not consummated. *Id.* In Exhibit 4 of that application, Reading disclosed the garnishment order involving Dr. Aurandt's stock. *Id.*

26. On January 29, 1992, in response to a Commission inquiry, then-counsel for Reading filed an amendment to Reading's pending transfer of control application and confirmed that Micheal Parker was, at that time, the sole shareholder, officer, and director of Partel, Inc. *See* Ex. R. The amendment also included a letter from Reading's bankruptcy counsel that described in more detail the option held by Meridian Bank to purchase 6.25% of Reading's issued and outstanding shares of stock owned by Partel, Inc. *Id.*

27. On February 7, 1992, then counsel for Reading filed another amendment to Reading's pending application for transfer of control. *See* Ex. S. That amendment made clear, provided the transfer of control application was granted, that the stock ownership of Reading would be different from the stock ownership of Reading prior to bankruptcy. *Id.* The amendment also included a copy of the Bankruptcy Court's order approving Reading's reorganization plan. *Id.*

28. The Commission's consent to transfer control from Reading Broadcasting, Inc., as Debtor-in-Possession, to Reading Broadcasting, Inc. was granted on February 10, 1992. *See* Ex. T. On April 10, 1992, then-counsel for Reading notified the Commission that Reading had consummated the transfer on March 12, 1992. *See* Ex. U. On April 16, 1992, Reading filed the required post transfer of control ownership report. *See* Ex. GG.

29. It is clear that the transfer of control from Reading Broadcasting, Inc., as debtor-in-possession, to Reading Broadcasting, Inc. was duly authorized.

C. The Dispute Between Competing Boards Represented A Private Dispute, And Therefore, Is Outside The Commission's Jurisdiction And Competence. Ultimate Control Remained With The Stockholders.

30. Sometime around September 1991, an internal dispute developed among certain board members which resulted in the creation of two competing boards of directors, each claiming to represent Reading. Adams falsely characterizes the dispute as “nothing less than a coup d’etat, an unfriendly take-over of RBI by Parker, who assumed control of the corporation through the possibly fraudulent (according to Linton) issuance of RBI stock.” *Motion* at ¶16. Adams further alleges that the dispute was a transfer of control which required Commission authorization. *Motion* at ¶17.

31. The events that transpired represent a private dispute between two competing shareholder groups which did not involve a transfer of control under any applicable precedent. (Notably, Adams fails to cite any precedent to support its theories.) As a preliminary matter, Reading notes that it is not within the purview of the Commission to decide whether any of the events questioned by Adams exceed the authority of the corporation’s board of directors or are otherwise illegal under laws other than the Communications Act. Those questions are matters that related to a private dispute under state law between competing shareholder groups. It is

well-settled that private disputes are best resolved by local courts of competent jurisdiction as the Commission has neither the authority nor competence to adjudicate private disputes. *See, e.g., Daniel Forrestall, Receiver for All American Broadcasting Company*, 8 FCC Rcd 884 n.10 (1993); *Petition of Turner Broadcasting System, Inc.*, 101 FCC 2d 843 at ¶15 (1985); *Mid-Texas Broadcasting, Inc.*, 71 FCC 2d 1173 (1979); *John L. Runner*, 36 Rad. Reg. 2d (P&F) 773 (1976). Therefore, the sole question before the Presiding Officer is whether Adams has presented substantial evidence, as required by Section 1.229 of the Commission's rules, to show that the actions taken by the so-called Parker-led board constitute a transfer of control within the meaning of Section 310(d) of the Communications Act.

32. While Reading is loathe to respond to Adams' tabloid-like written *Motion*, in this instance Adams' claims relate to the activities of the licensee itself, during the license term at issue in this proceeding. In contrast to other motions where Reading deemed a factual response unnecessary, Reading feels compelled to elucidate the dispute and report on the eventual resolution.<sup>9</sup>

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<sup>9</sup> As yet another example of Adams' ongoing attempts to cast Micheal Parker in a negative light before the Presiding Officer, Adams relates a confrontation between Micheal Parker and Dr. Aurandt that was described in the May 8, 1990 directors' meeting minutes, where Dr. Aurandt moved to terminate the Management Services Agreement. *Motion* at ¶7. Adams, however, with blatant disregard for the truth, incorrectly states that the "motion was tabled without further action." *Id.* In fact, at the very next directors' meeting held on May 23, 1990, the directors unanimously resolved, pursuant to a motion put forth by none

33. On September 14, 1991, an insurgent group of Reading shareholders, representing substantially less than 50% of the stockholders of the company, apparently met and elected a new board of directors.<sup>10</sup> See Ex. V at 2. The newly appointed insurgent board of directors apparently met after the stockholders' meeting and reportedly terminated the Management Services Agreement with Partel, Inc., based on alleged malfeasance by Micheal Parker. *Id.* Reading notes that the basis for alleging malfeasance is not clear and was never adjudicated. The newly appointed insurgent board also apparently declared the reorganization plan approved by the Bankruptcy Court "null and void." *Id.*

34. On October 25, 1991, in response to the insurgent board's actions, and pursuant to the By-laws, Micheal Parker issued a notice for a special shareholders meeting to be held October 30, 1991. See Ex. W. Included with the meeting notice was a proxy that, if executed by the shareholder, would authorize either Micheal Parker or Dr. Robert Clymer, a Reading shareholder and director, to vote on behalf of the shareholder on the matters set forth in the attached meeting notice. Under the company's By-laws, any such proxy is revocable at will (Ex. B at 3), so the issuance of such a proxy does not transfer control over the stock in question.

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other than Dr. Aurandt, to withdraw the motion to terminate the Management Services Agreement. See Ex. I at 7, ¶11.

<sup>10</sup> To the best of Reading's knowledge, there are no meeting minutes from this September 14, 1991 meeting.

35. At the subsequent October 30, 1991 shareholders' meeting, Micheal Parker told the shareholders present that Reading's bankruptcy counsel had advised him that the September 14, 1991 meeting instigated by the insurgent shareholders was unlawful. *See* Ex. V at 3. Further, Mr. Parker stated that he had a sufficient number of shares to call and hold the meeting and that he and/or Dr. Clymer had received a sufficient number of proxies to hold the instant meeting.<sup>11</sup> *See* Ex. V at 2, 6.

36. There apparently was agreement between both boards, pursuant to an apparent provision in the Bankruptcy Court approved reorganization plan, that all shares in Reading were cancelled effective September 17, 1991, and therefore, were required to be reissued. *See* Ex. Y at 6, 10. Pursuant to the August 1991 unanimous written consent (*see* Ex. H), which authorized any officer of the corporation to sign such documents necessary to implement the reorganization plan, sometime after September 17, 1991 and before the October 30, 1991 shareholders

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<sup>11</sup> Pursuant to the By-laws, special meetings of the shareholders may be called at any time by the President, or by shareholders entitled to cast at least one-fifth of the votes. *See* Ex. B at 5. Reading believes that Micheal Parker had authority, under at least one of the following bases, to hold the meeting: (1) as President of Reading; (2) as President of Partel, Inc., a shareholder that had been issued shares on October 15, 1991 which represented over 20% of the outstanding shares; or (3) because he had received a sufficient number of proxies to conduct the meeting. Reading also notes that in his November 8, 1999 deposition, Jack Linton, who was part of the insurgent shareholder group, acknowledged that Parker had a sufficient number of proxies to hold the meeting. *See* Ex. X at 51-64.



meeting, Micheal Parker reissued the stock. *See* Ex. Y at 10. Adams alleges that the reissuance of Reading's stock, by Micheal Parker, may have been fraudulent. *Motion* at 9. Reading notes that because members of both boards subsequently ratified the reissuance of shares (*see* discussion *infra* at paras. 44-46 and Exs. Z and AA), Adams' allegation regarding the validity of the aforementioned issuance of stock is moot.

37. Mr. Parker ruled that a quorum was present at the meeting, and subsequently, was elected to chair the meeting. *See* Ex. V at 8. Mr. Parker then removed all existing directors and accepted nominations for a new board. *Id.* The following five individuals were elected to serve on the board of directors: Micheal Parker, who had served on the board since August 1989; Dr. Clymer, who had served on the board since August 1989; Frank McCracken; Judge C. Meyer Rose; and Irvin Cohen, who also had been elected to the insurgent board. *See* Ex. V at 33.

38. The Commission does not consider changes in a board of directors over a period of time to generally constitute a transfer of control. In fact, the Court has endorsed the Commission finding that a transfer of control occurs only when there is an abrupt change in the entire board of a licensee. *See Storer Communications, Inc. v. FCC*, 58 Rad. Reg. 2d (P&F) 244 (D.C. Cir. 1985). In this instance, Micheal Parker and Dr. Clymer were existing directors who had served on Reading's board since August 1989. Moreover, Irvin Cohen was elected to be a member of both

boards. Under Commission precedent, the October 30, 1991 board election was not a transfer of control. As noted above, Adams cites no precedent to support its theory that the appointment of a slate of directors by majority vote of the stockholders constitutes an unauthorized transfer of control.

39. On February 4, 1992, Reading's annual stockholders meeting took place. The insurgent board apparently attempted, without success, to stop that meeting. *See* Ex. Y at 8. At that meeting, the aforementioned so-called Parker-led board of directors was re-elected. *Id.* at 28-32. In order to continue with the implementation and execution of the court-approved reorganization plan, the shareholders also adopted a resolution amending the Articles of Incorporation to increase the number of authorized shares to 420,000. *Id.* at 35.

40. The ability to direct a company's operations and to determine the composition of the board are relevant factors in determining where control is located. *See Metromedia, Inc.*, 98 FCC 2d 300, 306, *recon. denied*, 56 Rad. Reg. 2d (P&F) 1198 (1984). In this case, the board is empowered, under the By-laws, to direct the company's operations. The board's power is limited, however, by the shareholders' ability, under the By-laws, to change the composition of the board

through mandatory yearly elections, or more often, if deemed necessary, by calling special meetings.<sup>12</sup>

41. From the October 30, 1991 shareholder meeting until on or about September 20, 1992, both boards claimed to represent Reading. During that time, Partel, Inc. continued to manage the day-to-day operations of WTVE pursuant to the Management Services Agreement that was part of the reorganization plan approved by the Bankruptcy Court, and the so-called Parker-led board continued to govern Reading and implement the Bankruptcy Court approved reorganization plan, serving at the pleasure of the shareholders and guided by the policies set forth in the company's By-laws.

42. It is clear that Reading's board, duly elected by the shareholders, exercised the authority granted to it by the company's By-laws, which in turn, are ultimately determined by the shareholders. The exercise of this existing authority was not a transfer of control. This point is underscored by the fact that, all times the shareholders could have withdrawn the authority of the so-called Parker-led board under which the subject actions took place. *See Petition of Turner Broadcasting System, Inc.*, 101 FCC 2d 843 At ¶15 (1985) (If a board acted within

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<sup>12</sup> Reading's By-laws provide that Reading's directors are elected by the shareholders for one year terms. *See* Ex. B at 6. Special meetings of the shareholders may be called at any time by shareholders that constitute at least one-fifth of the votes which shareholders are entitled to cast. *Id.* at 5. The By-laws can only be amended by a majority vote. *See* Ex. B at 17.

its authority, then it merely exercised the authority granted to it by the corporation's by-laws, charter and, ultimately, by the shareholders themselves, and the exercise of this existing authority is not a transfer of control).

43. Moreover, Adams has not shown, nor can it show, that control over Reading ever shifted out of the hands of the company's stockholders or that there was a greater than 50% change in ownership of the company prior to the Commission's approval of the company's long-form transfer of control application. The stockholders simply did not lose any rights such that the new board of directors would be able to control the company against the wishes of the majority of the stockholders. The existence of a dissident group of minority stockholders opposed to the new board of directors only meant that there was internal dissent over the direction of the company, not that there was a transfer of control. Indeed, the subject actions can only be viewed as a manifestation of shareholder control within the intent of Section 310(d), which allows transfers of up to 49% of the stock of a company without any need for Commission approval.

44. Finally, on or about September 30, 1992, members from both boards reached a settlement agreement wherein the parties agreed, in relevant part, that the so-called Parker-led board "shall be deemed the validly elected and duly authorized board of directors of RBI as of October 30, 1991, that all action taken by such board shall be deemed valid acts of the corporation." *See Ex. Z at 2.*

Concurrently, on September 30, 1992, in order to eliminate all doubts as to the authority of that board to operate Reading, the board ratified, by unanimous written consent, certain actions which had been taken by that board since October 30, 1991. *See* Ex. AA.

45. Adams, in its *Motion*, based on certain passages from the October 31, 1991 shareholder meeting minutes, alleges that Micheal Parker, in order to gain control, may have fraudulently issued Reading stock, presumably to enable Parker to control the company. *Motion* at ¶9. In particular, Adams alleges that Parker, prior to the October 31, 1991 meeting, issued stock to the four so-called “Parker proxies” (i.e., Harvey Massey, Paul Pavloff, Stella Pavloff, and Alfred Busby). Adams neglects to mention that writs of execution had been served, on October 7 and 10, 1991 by the U.S. Marshall, on Reading as garnishee of certain shares of Reading stock to which Dr. Aurandt claimed entitlement, to satisfy the claims against Dr. Aurandt by the four so-called “Parker proxies.” *See* Ex. O. Therefore, to the extent that shares had been issued to these individuals, such shares would have been issued under lawful writs of execution, not at the direction of Parker. Adams is fully aware of the garnishment of Dr. Aurandt’s stock because it was described in Exhibit 4 to Reading’s 1991 long-form transfer of control application. *See* Ex. Q.

46. Any question of whether shares to these individuals were validly issued has been rendered moot by the Settlement Agreement (*See* Ex. Z), and

Unanimous Written Consent (*See* Ex. AA), which ratified, among other things, the issuance of stock to new shareholders during this period of time as well as the actions taken by these shareholders and Micheal Parker during the subject period.

47. The question as to whether either board acted within its authority under state corporation law is beyond the jurisdiction and expertise of the Commission. In view of the Settlement Agreement, the Presiding Officer must assume, for the purpose of ruling here, that the so-called Parker-led board acted within its authority pursuant to ultimate control by the company's shareholders, and therefore, there was no unauthorized transfer of control.

48. Notwithstanding the aforementioned Settlement Agreement and Unanimous Written Consent, which Reading believes renders Adams' allegations moot, under Commission policy, none of the actions that Adams refers to (other than the transfer of control which was approved by the Commission) constitutes a transfer of control requiring prior Commission approval under Section 310(d). The subject actions did not change the ownership of Reading, nor did they affect the operation of WTVE. Even if the so-called Parker-led board were deemed a bloc (which is difficult to imagine because it consisted of Parker, two non-stockholders and two long-time stockholders whose qualifications had been approved by the Commission), it was a minority bloc. The majority of the voting power and ownership of Reading remained with the other shareholders who retained ultimate

legal and *de facto* control of the company. See *Committee for Full Value of Storer Communications, Inc.*, 101 FCC 2d 434, 445, *aff'd sub nom. Storer Communications, Inc. v. FCC*, 763 F2d 436 D.C. Cir. 1985).

49. Further, nothing in the record suggests that Micheal Parker (or for that matter, the so-called Parker-led board), during this period, acted on his own or inconsistently with the wishes of the majority of shareholders. There simply is no evidence that Micheal Parker had the sort of influence with the remaining shareholders that the Commission in the past has found to constitute *de facto* control. See *By Direction Letter to William S. Paley*, 1 FCC Rcd 1025, 1026 (1986) (other than cases in which conduct demonstrates that control has actually been exercised, the Commission will find a *de facto* transfer of control to a minority shareholder only where there is clear evidence of the minority shareholder/director's dominance), *citing as examples*, *George E. Cameron, Jr.*, 91 FCC 2d 870 (Rev. Bd. 1982), *recon. denied*, 93 FCC 2d 789 (1983) (a 49% shareholder, director and officer possessed *de facto* control because he (1) had a 49% interest in the licensee's parent company with an option to increase his interest to nearly 100%; (2) he was the managing partner of the licensee's parent company and president of the subsidiary/licensee; (3) and he held judgments against the other principals which, if exercised, "would financially cripple them"); *Western Gateway Broadcasting Corp.*, 16 FCC 274 (1951) (a minority shareholder's demonstrated ability to control both

his own and his relatives' shares – relatives who were characterized as completely subservient – resulted in a finding that the subject minority shareholder had acquired *de facto* control of the licensee without the Commission's consent).

50. Adams also fails to recognize that the record in this case already demonstrates that Micheal Parker did not acquire control of the company in 1991-92. It is already a matter of record in this case that in August, 1997, Reading's board of directors terminated Micheal Parker as President of Reading and cancelled his management agreement in connection with a dispute over corporate management. He resumed his position as President of Reading and the management agreement was reinstated in November of 1997, by vote of the board of directors.

II. In View Of The Ultimate Disclosure During The Renewal Term, The Inadvertent Failure To Report Certain Changes In The Composition Of Readings' Board And Officers Does Not Constitute Misrepresentation/Lack Of Candor.

51. Adams seeks to add an issue to this proceeding to determine whether Reading engaged in misrepresentation and/or lack of candor by its failure to timely report certain changes in the composition of Reading's board of directors and officers. The Commission will add an issue for intentional misrepresentation or lack of candor only where the "totality of the evidence arouses a sufficient doubt on the point that further inquiry is called for." *Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392, 395 (D.C. Cir. 1985). Substantial evidence of an intent to deceive is



the *sine qua non* of a misrepresentation or lack of candor issue. See *Swan Creek Communications v. FCC*, 670 F2d 1217, 1222 (D.C. Cir. 1994). As the Commission has explained, “the nature of the misrepresentation or lack of candor is essentially irrelevant, because it is the ‘willingness to deceive’ that is most significant.” *Roy M. Speer*, 11 FCC Rcd 18393 (1996), citing *FCC v. WOKO, Inc.*, 329 U.S. 223, 227 (1946).

52. Moreover, in comparative cases, reporting violations will be tried only after the movant makes a *prima facie* showing that: (1) the unreported information is of decisional significance, (2) an intent to conceal is present, or (3) a pattern of repeated violations or other circumstances reflect significant carelessness is present. See *GAF Broadcasting Company, Inc.*, 8 FCC Rcd 8210, 8211 at ¶4 (1993); *Goodlettsville Broadcasting Co.*, 8 FCC Rcd 5178, 5181 (1993); *Merrimack Valley Broadcasting*, 99 FCC 2d 680, 683 n.9 (1984). Adams attempts to circumvent this requirement by merely alleging that Reading committed certain reporting violations and that these allegations, without more, provide a sufficient basis for the Presiding Officer to add an issue to this proceeding. Adams has failed to make the necessary *prima facie* showing.

53. As a preliminary matter, as Adams observed, Reading did not alert the Commission to the existence of the Management Services Agreement with Partel, Inc., until August 1991. See *Motion* at n.2. Under Commission policy, because the

Management Services Agreement was part of Reading's reorganization plan, Reading was not required to disclose the agreement to the Commission until Reading filed the voluntary transfer of control application to move out of bankruptcy. *See Roy Speer*, 11 FCC Rcd 18393 at ¶64 (1996) ("When a plan of reorganization, whether proposed by [the applicant] or another party to that proceeding, is approved by the court, [the applicant] will be obligated under our rules to file an application with the Commission seeking prior approval to emerge from bankruptcy. At that time, we will review the plan and any other documents to assess the relationship [between the applicant] and any other party"). In this case, Reading alerted the Commission about the Management Services Agreement when it filed its short-form transfer of control application to emerge from bankruptcy.

54. Moreover, because the Management Services Agreement was subject to Bankruptcy Court approval, it was not binding on Reading until such approval was granted. Therefore, until such approval was obtained, the Management Services Agreement was not binding and was not reportable even if the policy described above did not apply.

55. Finally, it is clear that there was no attempt to hide Mr. Parker's role with the station. From the time of his election on August 1, 1989 as an officer and director of Reading, Mr. Parker's corporate positions were disclosed on the company's annual ownership reports. Accordingly, any suggestion that Reading

was attempting to hide Mr. Parker's involvement with the company is completely baseless.

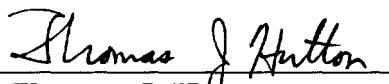
56. Next, to the extent that Reading may have inadvertently failed to timely notify the Commission regarding the composition of its board of directors and officers, the fact is that Reading ultimately did correctly report that information. For example, Reading's annual ownership report filed on March 29, 1994, correctly lists its officers and directors. *See* Ex. DD. Additionally, Reading notes that in each ownership report and transfer of control application, Reading went beyond the Commission requirement and disclosed every shareholder, whether or not attributable. The fact that the composition of Reading's officers and directors was accurately disclosed to the Commission during the renewal term and that Reading disclosed every ownership interest undercuts any inference of an intent by Reading to deceive the Commission. *See, e.g., Seven Hills Television Co.*, 2 FCC Rcd 6867 at ¶74 (Rev. Bd. 1987) (subsequent history omitted) (intent to deceive cannot be inferred where the Bureau was alerted to the existence of the agreements); *Telephone and Data Systems, Inc.*, 10 FCC Rcd 10518 at ¶16 and n.22 (ALJ 1995) ("where a party already has disclosed the information which it is later charged with attempting to conceal, the Commission has found an absence of intent to make misrepresentations or lack of candor." *See, e.g., Calvary Educational Broadcasting Network*, 9 FCC Rcd 6412, 6429 (Rev. Bd. 1994); *Valley Broadcasting Co.*, 4 FCC

Rcd 2611, 2614-15 (Rev. Bd. 1989); *International Radio, Inc.*, 98 FCC 2d 608, 639 (Rev. Bd. 1984); *Superior Broadcasting of California*, 94 FCC 2d 904, 909 (Rev. Bd. 1983)).

57. The claims made by Adams simply defy logic and conflict with the underlying evidence. Adams' *Motion* is baseless.<sup>13</sup>

Respectfully submitted,

READING BROADCASTING, INC.

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November 19, 1999

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<sup>13</sup> In light of the voluminous documentation that has been provided herein as exhibits, Reading does not believe that a declaration is needed. However, in the event that the Presiding Officer requests such declaration, one will be provided. Reading also notes that much of the information provided herein is subject to official notice.

## TABLE OF EXHIBITS

<u>Description</u>	<u>Exhibit</u>
August 1, 1989 Shareholders' Meeting Minutes	A
By-Laws of Reading Broadcasting, Inc.	B
August 1, 1989 Directors' Meeting Minutes	C
Management Services Agreement (05-28-89 version)	D
1991 Annual Ownership Report	E
September 13, 1989 Directors' Meeting Minutes	F
Submission of Management Services Agreement (03-21-90 version) to the Bankruptcy Court	G
August 1991 Unanimous Written Consent	H
Bankruptcy Court Order Confirming Debtor's Plan of Reorganization	I
August 15, 1991 Short-form Transfer of Control Application	J
August 15, 1991 Grant of Consent for Transfer of Control (short-form)	K
Stock Register Receipt for Partel, Inc. Stock Certificate	L
October 22, 1991 Letter Requesting Extension of Time Within Which To Consummate Transfer of Control	M
November 13, 1991 Letter Granting Extension of Time Within Which To Consummate Transfer of Control	N
Writs of Execution to Reading for Stock Held By Dr. Aurandt	O
July 31, 1989 Judgment Against Dr. Aurandt	P
November 22, 1991 Long-form Application for Transfer of Control	Q
January 29, 1992 Amendment to Long-form Transfer of Control Application	R

February 7, 1992 Amendment to Long-form Transfer of Control Application	S
February 10, 1992 Grant of Consent for Transfer of Control (long-form)	T
April 10, 1992 Consummation Transfer of Control Consummation Letter	U
October 30, 1991 Shareholders' Meeting Minutes	V
October 25, 1991 Notice of Shareholders' Meeting	W
November 8, 1999 Deposition of Jack Linton	X
February 4, 1992 Shareholders' Meeting Minutes	Y
September 1992 Settlement Agreement	Z
August 1992 Unanimous Written Consent	AA
January 25, 1990 Directors' Meeting Minutes	BB
February 19, 1991 Directors' Meeting Minutes	CC
1994 Annual Ownership Report	DD
May 23, 1990 Directors' Meeting Minutes	EE
Declaration of Jack A. Linton	FF
April 16, 1992 Post Transfer of Control Ownership Report	GG

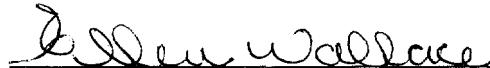
## CERTIFICATE OF SERVICE

I, Ellen Wallace, a secretary in the law firm of Holland & Knight, LLP, do hereby certify that on November 19, 1999, a copy of the foregoing OPPOSITION TO MOTION TO ENLARGE ISSUES (UNAUTHORIZED TRANSFER OF CONTROL AND MISREPRESENTATION/LACK OF CANDOR) was delivered by hand to the following:

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